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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/772,662

02/05/2004

James R. Haas

HAA

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20238 7590 07/24/2008  
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EXAMINER

CHEN, JOSE V

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

07/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/772,662	<b>Applicant(s)</b> HAAS, JAMES R.	
	<b>Examiner</b> José V. Chen	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20, 26-28, 31, 32, 35-47, 49-52, 54 and 55 is/are pending in the application.
- 4a) Of the above claim(s) 13, 14, 19, 20, 37 and 45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15-18, 26-28, 31, 32, 35-36, 38-44, 46-47, 49-52, 54, 55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

The indicated allowability of the claims is withdrawn in view of the newly discovered reference(s) to Rosenman and Pfister. Rejections based on the newly cited reference(s) follow. Any inconvenience is regretted.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12, 15, 16, 27-28, 31, 32, 35, 36, 38-40, 42-44, 46, 47, 49, 51, 52, 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenman. The patent to Rosenman teaches structure substantially as claimed including a short turn prong having a chiseled, self tapping tip (in as much such structures are defined) the prong extending helically about it's axis, a cap (110). The length of the spiral and the size of the coil will depend upon the particular application and the characteristics of the materials of construction,. The mechanical characteristics of the materials of

construction, e.g. stiffness, will be sufficient to effectively enable the structure to penetrate without deforming. The major dimension of the coils of the spiral will be appropriate for the tissue in which the structure is being anchored and will be sufficient to effectively provide a required holding power. The length of the spiral and the number of coils of the spiral will depend on the holding power required and the depth of tissue in which the structure will be anchored as well as the type of tissue. The number of coils can be any amount greater than one-half. One skilled in the art will readily appreciate minimal routine experimentation will readily lead to a determination of the optimal spiral length, coil dimensions, number of coils and material used for each particular application.

Claims 26, 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister in view of Rosenman in view of Pfister. The patent to Rosenman teaches structure substantially as claimed including a fastener as discussed above including a connection structure including prongs, the only difference being that the fastenable material is not a shelf. However, the patent to Pfister teaches the use of providing a fastener connecting shelf structure to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Rosenman to include connection to a shelf, as taught by Pfister since such structures are conventional alternative connection structures used in the same intended purpose of providing a connection and would have been predictable thereby providing structure as claimed.

Claims 17, 18, 50, 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenman as applied to claims 1, 35 above, and further in view of Lieberman. The patent to Rosenman teaches structure substantially as claimed as discussed above including a prong, the only difference being that the prong does not include a plurality of prongs. However, the patent to Lieberman teaches the use of providing a plurality of prongs to provide a sturdier connection to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Rosenman to include a plurality of prongs, as taught by Lieberman since such structures are conventional alternative structures used in the same intended purpose, thereby providing structure as claimed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references to Limpert, Haas, Haas, Werner, Schenk, Bolduc Unsworth , Giannakakos et al, Giannakakos teach structure similar to applicant's.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (571)272-6865. The examiner can normally be reached on m-f,m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

José V. Chen  
Primary Examiner  
Art Unit 3637

/José V. Chen/  
Primary Examiner, Art Unit 3637  
07-20-08